UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA) 16CR6044
)
vs.
Rochester, New York
JEFFREY C. LEATHERSICH) October 28, 2016
Defendant.) 9:30 a.m.
- - - - - - - - - - - - - - - - X

SENTENCE

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ELIZABETH A. WOLFORD
UNITED STATES DISTRICT JUDGE

WILLIAM J. HOCHUL, JR., ESQ.
United States Attorney
BY: FRANK SHERMAN, ESQ.
Assistant United States Attorney
6200 Federal Building
Rochester, New York 14614

PAUL ANTHONY GUERRIERI, ESQ.
1 East Main Street, 10th Floor
Rochester, New York 14614
Appearing on behalf of the Defendant

S. Whitcomb, USPO

COURT REPORTER: Karen J. Bush, Official Court Reporter
(585) 613-4312
100 State Street
Rochester, New York 14614

USA VS. J. LEATHERSICH

P R O C E E D I N G S

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THE CLERK: United States vs. Jeffrey C. Leathersich, 16CR6044EAW.

THE COURT: Good morning, everyone.

MR. GUERRIERI: Good morning.

MR. SHERMAN: Good morning.

THE COURT: We have Mr. Sherman here on behalf of the U.S. Attorney's Office; and Mr. Guerrieri is here; and Officer Whitcomb. And just for the record, you are Mr. Leathersich?

THE DEFENDANT: Yes.

THE COURT: And you're represented by Mr. Guerrieri?

THE DEFENDANT: Yes.

THE COURT: The matter is on for sentencing. I'm going to state on the record what I've received and reviewed. I have the presentence investigation report dated September 14th, 2016; I have a certificate of disposition from the Lima town court. I don't know if either of you have seen that, but that relates to the arrest and, I guess, conviction for disorderly conduct.

MR. SHERMAN: Your Honor, excuse me. I haven't seen that, but what date did you say the PSR was?

THE COURT: September 14th.

MR. SHERMAN: There is an October 18th revision.

THE COURT: I don't have that.

PROBATION: I don't know why.

MR. SHERMAN: There were two paragraphs revised.

THE COURT: The one you just handed me. I'm looking at the wrong date. I'm sorry, I have this. In other words, I looked at -- in other words, it says "date report revised September 14th, 2016, "and underneath it's "October 18th." I have that one.

MR. SHERMAN: Correct.

THE COURT: So the record is clear, I have the presentence investigation report as revised October 18th, 2016. I have a certificate of disposition from the Lima town court because I had asked Probation what the resolution was with respect to Mr. Leathersich's state court proceedings. I'll hand this down if either of you want to take a look at it.

MR. GUERRIERI: Thank you, your Honor.

MR. SHERMAN: Thank you.

THE COURT: I have Mr. Sherman's statement, the government's statement with respect to sentencing factors filed on September 23, 2016 at docket 10. I have the defendant's presentence memorandum that was filed this week at docket 11. I am going to state on the record, Mr. Guerrieri, I don't enter my scheduling order where I set deadlines and don't anticipate that attorneys are going to follow those deadlines and comply with those deadlines.

MR. GUERRIERI: I apologize.

THE COURT: And you clearly didn't do it here. And in fact, it was my Chambers that had to reach out to you to see if the sentencing was going forward before we got the submission. I have received and reviewed it, even though it was untimely. There were a number of letters attached to that submission. I have a letter from Philip Lepore dated September 5, 2016; a letter from Rudolph Lepore dated September 5, 2016; a letter from Nicole Langlais dated September 19th, 2016; a letter from Richard Briggs dated September 28th, 2016; a letter from Michael Cavanaugh dated September 12, 2016; a letter from Peter Bonadonna dated September 13th, 2016; a letter from Janell Cole Leathersich, dated September 12, 2016; an undated letter from Mark Gooding; a letter from Stacy Cline dated September 12, 2016; a letter from Randall Down dated September 14, 2016; a letter from Aaron Mitchell; a letter from Margot Fass dated August 22, 2016; and a letter from Beth Danehy dated September 30, 2016.

So, I guess, Mr. Sherman, for purposes of the record, can you confirm that the government has received the presentence investigation report as well as the submissions that I just referenced that were made on behalf of the defendant?

MR. SHERMAN: Yes, the government has, your Honor.

THE COURT: And does the government have any objections to the presentence investigation report?

MR. SHERMAN: No.

THE COURT: Mr. Guerrieri, can you confirm on the record that you received the presentence investigation report as well as the government's submission?

MR. GUERRIERI: I have, your Honor.

THE COURT: And have you gone over the presentence investigation report with Mr. Leathersich?

MR. GUERRIERI: Yes, Judge.

THE COURT: And, Mr. Leathersich, can you confirm for me that you have reviewed the presentence investigation report with your attorney?

THE DEFENDANT: Yes, Judge.

THE COURT: Mr. Guerrieri, does the defense have any objections to the presentence investigation report?

MR. GUERRIERI: We do not, Judge.

THE COURT: All right. Does the government move to sentence the defendant?

MR. SHERMAN: Yes, your Honor.

THE COURT: All right. Is there anything, Mr. Sherman, you would like to say?

MR. SHERMAN: No, your Honor. As is clear from the plea agreement, we anticipated that the defense might request a non-Guideline sentence. The government believes the Guidelines are accurate and, beyond that, leaves it to the Court.

THE COURT: Is the government asking for any particular sentence here?

MR. SHERMAN: No, other than it has no reason to suggest something out of the Guidelines beyond whatever the defense may argue to the Court, which we're going to leave to the Court.

THE COURT: Thank you. Mr. Guerrieri, is there anything you would like to say on behalf of your client before I sentence him?

MR. GUERRIERI: I do, your Honor. I guess in a sense, this case, and I guess the PSR and the memorandum, it almost reads like a Greek tragedy. As the Court knows from the PSR, Mr. Leathersich had a pretty tortured life from his childhood. The fact he was able to accomplish what he has accomplished is nothing short of amazing. From being abused as a young child to being kicked out of his home and living alone through graduating high school on his own, putting himself through school, becoming a physician's assistant, this is an extraordinarily atypical case, your Honor, and that is why I believe we asked the Court consider something below the Guidelines. When I first became involved in the case, I reached out to the U.S. Attorney's Office and Mr. Leathersich went in and spoke to the DEA agents. He cooperated fully. He took responsibility for his actions. And in large part, also, not wanting to create further problems for who were mentioned patient A and patient B. And, again, the more I looked into the case and the more I tried to find cases, this wasn't a situation where Mr. Leathersich was selling prescriptions for a financial gain or selling them out of the parking lot, or selling pills on the streets. Mr. Leathersich, as I'm sure the Court well knows, has conflicting feelings with respect to his sexuality and was going through a divorce at the time. He is a 51-year-old man who was married with children. And given his faith, right, wrong or in different, just to give an example, he had gone through five years of conversion therapy early in his life. With these two particular gentlemen, he found an emotional support that he didn't have. And it flew in the face of everything that Mr. Leathersich was raised into in terms of his beliefs and his family's beliefs. And as a result, I mean, when I looked at the facts and circumstances surrounding the prescriptions, the doses were titrated. He was told these individuals had back issues, things of that nature. And he started in small doses. I do believe he turned a blind eye. I appreciate the fact that he was in a position whereby he is entrusted with patients. But, unfortunately, he turned that blind eye and kept prescribing. The part that I have issue with respects to patient A and patient B, in terms of their statements where they were showered with gifts.

THE COURT: I don't have any statements from patient A and patient B.

MR. GUERRIERI: Just from facts in the PSR that were mentioned in the reports that were turned over to Probation is what I'm speaking of, Judge.

THE COURT: Okay.

MR. GUERRIERI: And these individuals were showered with gifts, money. It was an emotional support that Mr. Leathersich was looking for. And that is no excuse, but I think, given his bipolar disorder and given his psychological conditions, I do, in a sense, think he was taken advantage of. Because the amount of pills these individuals were asking for were not amounts for personal use.

THE COURT: What do you mean by that? You think that they were distributing it to others?

MR. GUERRIERI: I think they may have been. And I don't think it was not done on Mr. Leathersich's behalf because there was absolutely no allegation like that. We cooperated fully with the DEA. I think it was disingenuous what they stated to the DEA. I think Mr. Leathersich had this emotional connection and didn't want to lose that connection because of the fact he was going through his divorce, he lived his entire life in public as a heterosexual. And I see a man who has done so much good for so many people, both as a physician's assistant and to building foster homes in places and doing disaster relief in Haiti. He has done so many things for so many people. This is an isolated incident. Again, I go back to, I'm used to seeing conspiracy cases or drug cases or where someone is selling gross amounts of prescription pills for the purpose of financial gain. In this circumstance, it wasn't there. He was giving them money. That's the irony of this whole thing. Just, it's such an isolated incident. And the thought of Mr. Leathersich, given his health conditions, given the psychological conditions, given the fact that he voluntarily turned over his DEA license so he is no longer allowed to prescribe any medicines, any controlled substances, the fact that he is now engaged in treatment. I forget the name of it because I'm so used to lawyers concerned for lawyers. And how we in the legal community assist individuals with substance abuse issues and psychological issues so this way they can remain a licensed member and a productive member of the Bar. And Mr. Leathersich has done the same thing with respect to the medical profession. He has done so much for so many, between patients and orphans and traveling to India and other parts of the world to assist and help people. This case breaks my heart. I mean, I can't imagine somebody taking my law license away from me. And he has voluntarily given up his ability to make a living in that regard because he knows and understands what he did was wrong.

THE COURT: You say he voluntarily relinquished his DEA license; what about physician's assistant?

MR. GUERRIERI: That is currently being held in abeyance.

THE COURT: Is it through the OPMC or Department of Education?

MR. GUERRIERI: Yes, so he entered into the treatment.

THE COURT: Is it the OPMC or Department of Education?

THE DEFENDANT: OPMC.

THE COURT: The physician's assistant program.

THE DEFENDANT: Committee for physician health.

THE COURT: Where you voluntarily relinquish the license and you go through treatment and you hope at the end of the treatment you can have the license back?

THE DEFENDANT: Yes, Judge.

He is trying to right his wrongs. And I'm not debating what he did here was wrong, he is taking full responsibility for it. But having gotten to know Mr. Leathersich and knowing the gentle human being he is, again, I would ask this Court take into consideration all of those factors - his lack of criminal history. I know the Court does have the criminal contempt charges, which, on their face, I know fly in the face of what a court is. But I reiterate, Judge, he was going through a tumultuous divorce. The allegations were of such a nature that the District Attorney's Office in Livingston County offered him non-criminal dispositions, your Honor. There is no issues with respect to him seeing his children, which will be noted in the order of protection that is attached to the Court's file, that is a no offensive contact order of protection, also subject to a family court order. That way if there is visitation issues or anything of that nature, they can be modified for that purpose.

THE COURT: Has the divorced been finalized at this point?

THE DEFENDANT: No, Judge.

MR. GUERRIERI: And that is why I come back to, as a part of me and I don't want this to come up as flippant to the Court, I wish this had been referred in state court because where there is drug treatment court and mental health court, as the Court can see by his diagnoses, whereby he could have made it through this.

THE COURT: What is your understanding of why this was prosecuted in federal court?

MR. GUERRIERI: My knowledge of it was strictly that the DEA had basically caught wind of it. We came and spoke to them here. And there was an investigation that was conducted in tandem with, I believe, Mr. Sherman and the DEA agents involved. That, to my knowledge, is why it remained here. And that is why I come back to this notion of the Guidelines is so strict in that regard and I am just so used to dealing with gangs and other conspiracies and large scale narcotics distribution, and I just hate to see this be treated in the same fashion by the law. I know, thank goodness, Judge, that you can review this and we can hope for something that goes below the Guidelines here. I'm hopeful, given the fact that he does have surgery coming up, that if there is a sentence where he will be incarcerated, he can voluntarily surrender after he receives the medical treatment he needs. But at the same time, I hope it doesn't come to that. I'd like to see him go on probation supervision where we can ensure that, one, he is completing his mental health treatment or completing any substance abuse treatment, and he can remain an active participant in the community because he has done so much good. In the alternative, I know I've had cases that people have been put on home confinement or people have gone to halfway houses. And at this point, that is all we can truly hope for. I don't think there has been any debate whatsoever that Mr. Leathersich has taken responsibility for his action. He did so right from the get go, which is why we immediately contacted Mr. Sherman and met with the DEA and Mr. Sherman and went through everything that occurred with respect to this. And he did the same with Probation as well. Beyond that, Judge, there is not much else we can ask for. I hope that your Honor takes into consideration the support he has in this courtroom, what he has gone through as a child, what he is going through now and know this was an isolated incident. This would never occur again. And given that, Judge, we're basically asking for the mercy of this Court.

THE COURT: Okay. Thank you, Mr. Guerrieri. Mr. Leathersich, the law allows you -- let me ask you this first, Mr. Sherman, do you have anything else you want to add before I turn to Mr. Leathersich?

MR. SHERMAN: No, your Honor, other than to answer your question about the federal investigation. The initial information about the defendant's conduct came to the DEA diversion squad in Buffalo, and, as is normal, DEA refers cases to the U.S. Attorney's Office.

THE COURT: I'm more familiar with these types of cases often being handled in state court with the Department of Health being involved.

MR. SHERMAN: Right. And generally many of the cases we get come from OPMC or the Department of Health. This one came directly from DEA, which had gotten the information directly. The only other technical thing is I believe that he is ineligible for probation.

THE COURT: Under the Guidelines.

MR. SHERMAN: Under the Guidelines, right, right.

THE COURT: You're not disputing that I have discretion.

MR. SHERMAN: You have a full range of options.

THE COURT: Okay. Mr. Leathersich, the law allows you to address me before I sentence you. Is there anything that you would like to say? Why don't you move the microphone towards him?

THE DEFENDANT: Judge, this has been a very difficult five to six months, as you can imagine, since this happened. It's allowed for lots of time for introspection and review of my actions. And I just want to say to you and the

Court that I'm very sorry for what I allowed to happen. I lost touch with the responsibility that was entrusted to me and I'm very sorry for that. I've always taken that very -- that responsibility very serious, but I was given prescriptive authority and I would never make this mistake again.

THE COURT: Thank you, Mr. Leathersich. I am prepared to sentence you. In that regard, as I indicated, I've had an opportunity to review the presentence investigation report as revised October 18th, 2016, as well as all of the other submissions to which I previously referred. I carefully reviewed all of those submissions. I have listened carefully to the comments that have been made here in court today. You stand before me, you're 51 years old, right?

THE DEFENDANT: Yes, Judge.

THE COURT: And you're being sentenced after pleading guilty to two counts of dispensing a controlled substance outside the scope of professional practice in violation of Title 21 U.S.C. Sections 841(a)(1) and (b)(1)(C). The maximum sentence that I can impose for each count is 20 years in prison, three years of supervised release, a one million dollar fine and a $100 mandatory special assessment. Now, on June 3, 2016, you appeared before me and pled guilty to this charge. Your plea was by way of a written plea agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal

Procedure. And what that meant was that your plea was entered into with the understanding and appreciation that the recommendations that were included in the plea agreement were not binding on me and I could impose up to the maximum allowed under the law and you would not be able to take your plea back. You and the government agreed that the Sentencing Guidelines recommended a range of 37 to 46 months in prison, although you each reserved the right to argue for a sentence outside that range. Now, as I explained to you at the time of your plea, sentencing in this case, Mr. Leathersich, is pursuant to the Sentencing Reform Act of 1984. That is the federal law that I have to follow when I impose a sentence in any case in front of me. And that law requires that I impose a sentence that is sufficient, but not greater than necessary to comply with the objectives of sentencing set forth at 18 U.S.C. Section 3553(a). Mr. Guerrieri indicated he received a copy of the presentence investigation report and reviewed it with you, and you told me that you reviewed the presentence investigation report. There have been no objections on the part of either party to the statements that are contained in the presentence investigation report, so therefore, I'm going to adopt the statements that are contained in that report as my findings of fact.

Now, the Sentencing Guidelines are no longer considered mandatory, they are advisory, but they are the first step that I have to go through before I impose a sentence in any case and I do have to consider them. And I find that the calculations contained in the presentence investigation report, which are the same ones contained in the plea agreement are correct. So what that means, because of the amount of Oxycodone distributed, which was 56.4 grams, that converts to 377.88 kilograms of marijuana under the Guideline tables and conversions. And so what that means is that there is a base offense level, pursuant to 2D1.1(a)(5) and (c)(8) to the Guidelines of 24. In addition, you do qualify for what's basically called safety valve relief for the reasons set forth in paragraph 33 of the PSR. So pursuant to 2D1.1(b)(17), the offense level goes down by two. However, because you abused a position of trust, specifically you had a valid DEA license and were practicing as a physician's assistance and engaged in this conduct in that capacity, pursuant to 3B1.3 of the Guidelines, the offense level goes up by two. So that would bring us to an adjusted offense level of 24. I think it's clear that you have accepted responsibility for your conduct, and so pursuant to 3E1.1(a) and 3E1.1(b) of the Guidelines, the offense level goes down by three. So your total offense level becomes a 21. You have no documented criminal history that causes any criminal history points, so your criminal history category is a 1. So what that means, under the Guidelines, at least, is that with an offense level of 21, a criminal history category of 1, the Sentencing Guidelines would recommend a sentence of incarceration of 37 to 46 months in prison, one to three years of supervised release, a fine of $15,000 up to 2 million dollars, and a $200 mandatory special assessment. Now, in addition to the advisory Guidelines, I've considered all of the other factors set forth at 18 U.S.C. 3553(a) to determine a sentence that is sufficient but not greater than necessary to comply with the objectives of sentencing set forth in that statute. I've considered the nature and circumstances of your crime, your history and characteristics. According, to the PSR, this crime was initially investigated because there was an anonymous tip that you were prescribing Oxycodone to a recovering drug addict without completing diagnostic procedures. The two individuals who were receiving these drugs are referred to in the plea agreement, the PSR, as patient A and patient B, although it's really a misnomer, because from all I've seen, they weren't patients. They were individuals that you were having sexual relationships with and you had a personal relationship with. I know that you've indicated in your statement that's in the PSR that you thought you were involved in a real relationships with these individuals and you deny that you were trading drugs for sex. I have a little difficulty agreeing with that, at least from an objective view of the evidence. It seems as though very clearly, these individuals were being provided with certain items of value by you that included money, it included gifts, and it clearly included you prescribing, outside of the scope of your professional responsibilities, Oxycodone to them. The difficulty I have with this is it wasn't an isolated incident and it wasn't something that occurred over the course of a few months. With patient A, the time frame, according to the PSR and the plea agreement was October 7, 2013 through December 27, 2015, that is over two years. And patient B was a shorter period of time, July 10, 2015 through March 24, 2016, but it's still, I mean, at one point in time, you were prescribing the medication to both of them at least for about a six-month time period. I don't quarrel at all with the notion that there is a lot of good that you've done in your life. And there is a lot of trauma and difficulty that you've experienced. You had an abusive father, it's documented in the PSR. You moved out of your family home at the age of 15, which you were a kid, really, at that point. You lived in a boarding house, as I understand it, until you were 17. You adopted all three of your children. The support that you provided to the mother of your oldest child, who is the mother, I guess, is disabled, and you support her financially, and that is certainly -- I've taken that into account. You've been a foster parent with your, I guess, estranged wife for a number of different children. You suffer from a number of physical ailments documented in paragraphs 69 through 70 of the PSR. You have, really, a lifelong history of various mental health issues that are documented in paragraph 71 through 73 of the PSR. You have done some really impressive work. And according to the PSR, from 1984 to 1992, you were involved in Team World Outreach working in India, Zaire and Fiji. You also provided health care services in Mexico and Belize. In 2011, you want to Haiti to provide health care after the earthquake there. There is no question you have a history of going above and beyond what most people do. A lot of people engaging in charitable endeavors, they'll write checks or go to a gala to support a particular charitable cause, but you have really lived a life of service in many respects in helping others. And I have difficulty reconciling that with this really completely opposite life that you have led. And I don't question the notion that there is a completely, I guess, underbelly of your life, so to speak, and I think in some respects, it is a disguise and hasn't been readily evident because of the struggles you've had with your sexuality. And by no means am I minimizing that, I'm not. And the struggles that you've had really with mental health issues. But the difficulty is that for all of this good that you've done in your life, because of this -- these issue that you've been dealing with and the struggles that you've been having, it obviously led you here to standing in front of me today to be sentenced in a federal criminal case where you have been convicted of two felonies. And that, I think, emphasizes the seriousness of the fact that you need to get -- no matter what sentence I impose here, you need to get a handle on this because it's clearly caused problems up to this point. And unless you come to grips with this, it's going to probably, in all likelihood, create problems for you going forward.

I've considered the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from any further crimes that you might commit. There is no question this is a serious crime and that is reflected by the Guideline range here. It's not an insignificant Guideline range. And in part, that Guideline range is driven by the amount of drugs involved, but it's also driven by you abusing a position of trust by engaging in this conduct. I have trouble thinking that you would engage in similar conduct in the future. I don't see this as you have a risk of re-offending necessarily, but that is just one of the factors that I need to consider when I impose a sentence in a case. I've considered the need to provide you with any needed educational or vocational training, medical treatment or other treatment in the most effective manner as well as the kinds of sentences available, the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. I'm going to be very up front. This has been one of the more difficult sentencing decisions I've had to make. I'll be on the bench three years in December. I've had cases where the sentencing ranges have been much higher than this. And I haven't struggled with that decision as much as I struggled with this decision, Mr. Leathersich. And there are a number of reasons for that. And I guess one of the reasons, I guess most of the defendants have very traumatic and tragic upbringings and there are oftentimes when you have a case in front of you, it's explained and I believe, that the reasons that they are in federal court and what has led them to be in federal court and be sentenced. And I think, I struggle with the sentence to impose here for your particular crime, but I also have to be mindful of being fair with respect to not only you, but also all of the other cases that I have in front of me and not to have a sentence disparity that is inappropriate. And that is one of the reasons that the Guidelines are often helpful, because the Guidelines often allow a judge to at least know what is typically suggested for a particular case. And I, for a number of different reasons, I think an incarceration sentence could very well be justified here and I don't think anybody would question that. But I guess I just don't know that prison is necessarily the most appropriate remedy for you here. And because of that, I'm not going to impose a prison sentence. I am going to impose a probation sentence. It's going to be three years of probation and I'm going to set a number of conditions with respect to that and they are going to be explained in just a minute.

So it's, therefore, the judgment of the Court, Jeffrey C. Leathersich, that you're hereby sentenced to three years probation. While on probation, you shall not commit another federal, state or local crime. And you shall be prohibited from possessing a firearm, ammunition or other dangerous device. In addition, you shall not possess any controlled substances, and you shall comply with the standard conditions that have been adopted by this Court. You'll see a copy of those in writing as part of the judgment and commitment and you need to be aware of those and comply with them. In addition, you're going to have to comply with the following additional conditions. Since the instant offense occurred after September 13th, 1994, drug testing is required by the 1994 Crime Control Act. And you're also required to cooperate in a collection of DNA as required by the Justice for All Act of 2004. You have to comply with the following conditions. I'm going to place you on home detention, which will be monitored by an electronic monitoring device for six months. You shall follow monitoring specified by the probation office as outlined in form 61. You shall pay the daily rate provided by the U.S. Probation office. The daily rate and payment schedule are subject to periodic adjustments by the U.S. Probation office. I'm also going to require you to complete 100 hours of community service during the time that you're placed on probation. Exactly what form that will take will be subject to the approval of your probation officer. In addition, you need to comply with all orders of protection and notify your probation officer of them. You shall submit to substance abuse testing to include urinalysis and other testing. The details of such testing shall be approved by the U.S. Probation office. If substance abuse is indicated by the testing, you're to complete a drug/alcohol evaluation and enter into any treatment as deemed necessary by the U.S. Probation office and/or the Court. You're not to leave treatment until discharge is agreed to by the U.S. Probation office and/or the Court. While in treatment and after discharge from treatment, you're it abstain from the use of alcohol. You're required to contribute to the cost of services rendered. Copayment in the amount to be determined by the U.S. Probation office based on the ability to pay and the availability of third-party payment. You shall submit to a search of your person, property, vehicle, place of residence or any other property under your control based upon reasonable suspicion and permit confiscation of any evidence or contraband discovered. You shall submit to a mental health evaluation. If indicated by the evaluation, you shall participate in mental health treatment. The details of such treatment to be approved by the U.S. Probation office. You are not to leave such treatment until discharge is agreed to by the U.S. Probation office and the treating agency. While in treatment or taking psychotropic medication, you shall abstain from the use of alcohol. You're required to contribute to the cost of services rendered, co-payment in the amount of to be determined by the U.S. Probation office based on the ability to pay or availability of third-party payment.

I do find that you have the ability to pay a modest fine. Therefore, I'm going to impose a fine of $1000 on each count for a total of $2,000. Interest on the fine is waived. You shall submit monthly payments at the rate of 10 percent of your monthly gross income while on probation. You're also required to pay the $100 mandatory special assessment for each count, so a total of $200 that is due immediately. While incarcerated, payments shall begin under the Bureau of Prisons Financial Responsibility Program and payments are to be made to the Clerk, U.S. District Court, attention Finance, United States Courthouse, 2 Niagara Square, Buffalo, New York, 14202. Pursuant to the plea agreement, you've waived any right to appeal because the sentence that I imposed is less than the range set forth in the plea agreement.

Mr. Guerrieri, any questions?

MR. GUERRIERI: None whatsoever, your Honor.

THE COURT: Mr. Sherman?

MR. SHERMAN: No, your Honor.

THE COURT: There is nothing to dismiss here, right?

MR. SHERMAN: No.

THE COURT: Good luck, Mr. Leathersich.

THE DEFENDANT: Thank you, Judge.

MR. GUERRIERI: Thank you, your Honor.

* * *

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

S/ Karen J. Bush, RPR

Official Court Reporter